

## REINSURANCE INTERMEDIARY MODEL ACT

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### Section 1. Short Title

This Act may be cited as the Reinsurance Intermediary Act.

### Section 2. Definitions

As used in this Act:

- A. “Actuary” means a person who is a member in good standing of the American Academy of Actuaries.
- B. “Controlling person” means a person, firm, association or corporation who directly or indirectly has the power to direct or cause to be directed, the management, control or activities of the reinsurance intermediary.
- C. “Insurer” means a person, firm, association or corporation duly licensed in this state pursuant to the applicable provisions of the insurance law as an insurer.
- D. “Licensed producer” means a person licensed under [insert reference to state producer licensing law] to sell, solicit or negotiate insurance.
- E. “Reinsurance intermediary” means a reinsurance intermediary-broker or a reinsurance intermediary-manager as these terms are defined in Subsections F and G of this section.
- F. “Reinsurance intermediary-broker” (RB) means a person, other than an officer or employee of the ceding insurer, firm, association or corporation who solicits, negotiates or places reinsurance cessions or retrocessions on behalf of a ceding insurer without acting as a RM on behalf of the insurer.

- G. “Reinsurance intermediary-manager” (RM) means a person, firm, association or corporation, whether known as a RM, manager or other similar term, who has authority to bind or manages all or part of the assumed reinsurance business of a reinsurer (including the management of a separate division, department or underwriting office) and acts as an agent for the reinsurer except the following:
- (1) An employee of the reinsurer;
  - (2) A U.S. manager of the U. S. branch of an alien reinsurer;
  - (3) An underwriting manager that, pursuant to contract, manages all or part of the reinsurance operations of the reinsurer, is under common control with the reinsurer, subject to the Holding Company Act, and that is not compensated based on the volume of premiums written.
  - (4) The manager of a group, association, pool or organization of insurers which engage in joint underwriting or joint reinsurance but only if the group association, pool or organization of insurers (as distinguished from its members) is subject to examination by the [Insurance Commissioner] of the state in which the manager’s principal business office is located.
- H. “Reinsurer” means a person, firm, association or corporation duly licensed in this state pursuant to the applicable provisions of the insurance law as an insurer with the authority to assume reinsurance.
- I. “To be in violation” means that the reinsurance intermediary, insurer or reinsurer for whom the reinsurance intermediary was acting failed to substantially comply with the provisions of this Act.
- J. Qualified U. S. financial institutions:
- For purposes of this Act, a “qualified U. S. financial institution” means an institution that:
- (1) Is organized or (in the case of a U.S. office of a foreign banking organization) licensed, under the laws of the United States or any state thereof;
  - (2) Is regulated, supervised and examined by U.S. federal or state authorities having regulatory authority over banks and trust companies; and
  - (3) Has been determined by either the commissioner, or the Securities Valuation Office of the National Association of Insurance Commissioners, to meet such standards of financial condition and standing as are considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit will be acceptable to the commissioner.

### **Section 3. Licensure**

- A. No person, firm, association or corporation shall act as a RB in this state if the RB maintains an office either directly or as a member or employee of a firm or association, or an officer, director or employee of a corporation:

- (1) In this state, unless the RB is a licensed producer or reinsurance intermediary in this state; or
  - (2) In another state, unless the RB is a licensed producer or reinsurance intermediary in this state or another state having a law substantially similar to this law.
- B. No person, firm, association or corporation shall act as a RM:
- (1) For a reinsurer domiciled in this state, unless the RM is a licensed producer or reinsurance intermediary in this state;
  - (2) In this state, if the RM maintains an office either directly or as a member or employee of a firm or association, or an officer, director or employee of a corporation in this state, unless the RM is a licensed producer or reinsurance intermediary in this state.
- C. The commissioner may require a resident RM subject to Subsection B to:
- (1) File a bond in an amount from an insurer acceptable to the commissioner for the protection of the reinsurer; and

**Drafting Note:** It is contemplated that one bond per reinsurer represented would be required.

- (2) Maintain an errors and omissions policy in an amount acceptable to the commissioner.
- D. (1) The commissioner may issue a reinsurance intermediary license to any person, firm, association or corporation that has complied with the requirements of this Act. A license issued to a firm or association will authorize all the members of the firm or association and any designated employees to act as reinsurance intermediaries under the license, and all such persons shall be named in the application and any supplements thereto. A license issued to a corporation shall authorize all of the officers, and any designated employees and directors thereof to act as reinsurance intermediaries on behalf of the corporation, and all such persons shall be named in the application and any supplements thereto.
- (2) The commissioner shall issue a nonresident reinsurance intermediary license if:
    - (a) The person is currently licensed as a resident reinsurance intermediary or insurance producer and in good standing in his or her home state;
    - (b) The person has submitted the proper request for licensure and has paid the fees required by [insert appropriate reference to state law or regulation];
    - (c) The person has submitted or transmitted to the insurance commissioner the application for licensure that the person submitted to his or her home state, or in lieu of that application, a completed application deemed appropriate by the commissioner; and

- (d) The person's home state awards nonresident licenses to residents of this state on the same basis.

**Drafting Note:** In accordance with Public Law No. 106-102 (the "Gramm-Leach-Bliley Act"), states should not require an applicant for a non-resident license to satisfy any additional requirements for a license except as allowed by the Act. Incorporation into this model law of the Gramm-Leach-Bliley Act provisions with respect to non-resident administrative licensing procedures should not be read to imply that corrective action was required to bring this model law into compliance with the Gramm-Leach-Bliley Act. The changes were made solely to ensure and to clarify that the licensing provisions of this model law are consistent with the language of the Gramm-Leach-Bliley Act.

- E. The commissioner may refuse to issue a reinsurance intermediary license if, in his or her judgment, the applicant, any one named on the application, or any member, principal, officer or director of the applicant, is not trustworthy, or that any controlling person of such applicant is not trustworthy to act as a reinsurance intermediary, or that any of the foregoing has given cause for revocation or suspension of such license, or has failed to comply with any prerequisite for the issuance of such license. Upon written request therefor, the commissioner will furnish a summary of the basis for refusal to issue a license, which document shall be privileged and not subject to [cite applicable freedom of information law].
- F. Licensed attorneys at law of this state when acting in their professional capacity as such shall be exempt from this section.

#### **Section 4. Required Contract Provisions—Reinsurance Intermediary—Brokers**

Transactions between a RB and the insurer it represents in such capacity shall only be entered into pursuant to a written authorization, specifying the responsibilities of each party. The authorization shall, at a minimum, provide that:

- A. The insurer may terminate the RB's authority at any time.
- B. The RB will render accounts to the insurer accurately detailing all material transactions, including information necessary to support all commissions, charges and other fees received by, or owing, to the RB, and remit all funds due to the insurer within thirty (30) days of receipt.
- C. All funds collected for the insurer's account will be held by the RB in a fiduciary capacity in a bank that is a qualified U.S. financial institution as defined herein.
- D. The RB will comply with Section 5 of this Act.
- E. The RB will comply with the written standards established by the insurer for the cession or retrocession of all risks.
- F. The RB will disclose to the insurer any relationship with any reinsurer to which business will be ceded or retroceded.

#### **Section 5. Books and Records—Reinsurance Intermediary Brokers**

- A. For at least ten (10) years after expiration of each contract of reinsurance transacted by the RB, the RB will keep a complete record for each transaction showing:
  - (1) The type of contract, limits, underwriting restrictions, classes or risks and territory;

- (2) Period of coverage, including effective and expiration dates, cancellation provisions and notice required of cancellation;
- (3) Reporting and settlement requirements of balances;
- (4) Rate used to compute the reinsurance premium;
- (5) Names and addresses of assuming reinsurers;
- (6) Rates of all reinsurance commissions, including the commissions on any retrocessions handled by the RB;
- (7) Related correspondence and memoranda;
- (8) Proof of placement;
- (9) Details regarding retrocessions handled by the RB including the identity of retrocessionaires and percentage of each contract assumed or ceded;
- (10) Financial records, including but not limited to, premium and loss accounts; and
- (11) When the RB procures a reinsurance contract on behalf of a licensed ceding insurer:
  - (a) Directly from any assuming reinsurer, written evidence that the assuming reinsurer has agreed to assume the risk; or
  - (b) If placed through a representative of the assuming reinsurer, other than an employee, written evidence that the reinsurer has delegated binding authority to the representative.

**Drafting Note:** States may wish to bifurcate this subsection, shortening the required retention period for contracts limited to first-party property coverages and lengthening the period for certain third-party liability coverages (e.g., medical malpractice).

- B. The insurer will have access and the right to copy and audit all accounts and records maintained by the RB related to its business in a form usable by the insurer.

**Section 6. Duties of Insurers Utilizing the Services of a Reinsurance Intermediary—Broker**

- A. An insurer shall not engage the services of any person, firm, association or corporation to act as a RB on its behalf unless the person is licensed as required by Section 3A of this Act.
- B. An insurer may not employ an individual who is employed by a RB with which it transacts business, unless the RB is under common control with the insurer and subject to the [insert citation to the Holding Company Act].
- C. The insurer shall annually obtain a copy of statements of the financial condition of each RB with which it transacts business.

**Section 7. Required Contract Provisions—Reinsurance Intermediary—Managers**

Transactions between a RM and the reinsurer it represents in such capacity shall only be entered into pursuant to a written contract, specifying the responsibilities of each party, which shall be approved by the reinsurer's Board of Directors. At least thirty (30) days before the reinsurer assumes or cedes business through the producer, a true copy of the approved contract shall be filed with the commissioner for approval. The contract shall, at a minimum, provide that:

- A. The reinsurer may terminate the contract for cause upon written notice to the RM. The reinsurer may immediately suspend the authority of the RM to assume or cede business during the pendency of any dispute regarding the cause for termination.
- B. The RM will render accounts to the reinsurer accurately detailing all material transactions, including information necessary to support all commissions, charges and other fees received by, or owing to the RM, and remit all funds due under the contract to the reinsurer on not less than a monthly basis.
- C. All funds collected for the reinsurer's account will be held by the RM in a fiduciary capacity in a bank that is a qualified U.S. financial institution as defined herein. The RM may retain no more than three (3) months estimated claims payments and allocated loss adjustment expenses. The RM shall maintain a separate bank account for each reinsurer that it represents.
- D. For at least ten (10) years after expiration of each contract of reinsurance transacted by the RM, the RM will keep a complete record for each transactions showing:
  - (1) The type of contract, limits, underwriting restrictions, classes or risks and territory;
  - (2) Period of coverage, including effective and expiration dates, cancellation provisions and notice required of cancellation, and disposition of outstanding reserves on covered risks;
  - (3) Reporting and settlement requirements of balances;
  - (4) Rate used to compute the reinsurance premium;
  - (5) Names and addresses of reinsurers;
  - (6) Rates of all reinsurance commissions, including the commissions on any retrocessions handled by the RM;
  - (7) Related correspondence and memoranda;
  - (8) Proof of placement;
  - (9) Details regarding retrocessions handled by the RM, as permitted by Section 9D of this Act, including the identity of retrocessionaires and percentage of each contract assumed or ceded;
  - (10) Financial records, including but not limited to, premium and loss accounts; and

- (11) When the RM places a reinsurance contract on behalf of a ceding insurer:
  - (a) Directly from any assuming reinsurer, written evidence that the assuming reinsurer has agreed to assume the risk; or
  - (b) If placed through a representative of the assuming reinsurer, other than an employee, written evidence that such reinsurer has delegated binding authority to the representative.

**Drafting Note:** States may wish to bifurcate this subsection, shortening the required retention period for contracts limited to first-party property coverages and lengthening the period for certain third-party liability coverages (e.g., medical malpractice).

- E. The reinsurer will have access and the right to copy all accounts and records maintained by the RM related to its business in a form usable by the reinsurer.
- F. The contract cannot be assigned in whole or in part by the RM.
- G. The RM will comply with the written underwriting and rating standards established by the insurer for the acceptance, rejection or cession of all risks.
- H. Rates, terms and purposes of commissions, charges and other fees which the RM may levy against the reinsurer are set forth.
- I. If the contract permits the RM to settle claims on behalf of the reinsurer:
  - (1) All claims will be reported to the reinsurer in a timely manner;
  - (2) A copy of the claim file will be sent to the reinsurer at its request or as soon as it becomes known that the claim:
    - (a) Has the potential to exceed the lesser of an amount determined by the commissioner or the limit set by the reinsurer;
    - (b) Involves a coverage dispute;
    - (c) May exceed the RM's claims settlement authority;
    - (d) Is open for more than six (6) months; or
    - (e) Is closed by payment of the lesser of an amount set by the commissioner or an amount set by the reinsurer;
  - (3) All claim files will be the joint property of the reinsurer and RM. However, upon an order of liquidation of the reinsurer the files shall become the sole property of the reinsurer or its estate; the RM shall have reasonable access to and the right to copy the files on a timely basis;
  - (4) Any settlement authority granted to the RM may be terminated for cause upon the reinsurer's written notice to the RM or upon the termination of the contract. The reinsurer may suspend the settlement authority during the pendency of the dispute regarding the cause of termination.

- J. If the contract provides for a sharing of interim profits by the RM, interim profits will not be paid until one year after the end of each underwriting period for property business and five (5) years after the end of each underwriting period for casualty business (or a later period set by the commissioner for specified lines of insurance) and not until the adequacy of reserves on remaining claims has been verified pursuant to Section 9C of this Act.
- K. The RM will annually provide the reinsurer with a statement of its financial condition prepared by an independent certified accountant.
- L. The reinsurer shall periodically (at least semi-annually) conduct an on-site review of the underwriting and claims processing operations of the RM.
- M. The RM will disclose to the reinsurer any relationship it has with any insurer prior to ceding or assuming any business with such insurer pursuant to this contract.
- N. Within the scope of its actual or apparent authority the acts of the RM shall be deemed to be the acts of the reinsurer on whose behalf it is acting.

#### **Section 8. Prohibited Acts**

The RM shall not:

- A. Cede retrocessions on behalf of the reinsurer, except that the RM may cede facultative retrocessions pursuant to obligatory facultative agreements if the contract with the reinsurer contains reinsurance underwriting guidelines for such retrocessions. The guidelines shall include a list of reinsurers with which automatic agreements are in effect, and for each such reinsurer, the coverages and amounts or percentages that may be reinsured, and commission schedules;
- B. Commit the reinsurer to participate in reinsurance syndicates;
- C. Appoint any producer without assuring that the producer is lawfully licensed to transact the type of reinsurance for which he is appointed;
- D. Without prior approval of the reinsurer, pay or commit the reinsurer to pay a claim, net of retrocessions, that exceeds the lesser of an amount specified by the reinsurer or one percent of the reinsurer's policyholder's surplus as of December 31 of the last complete calendar year;
- E. Collect any payment from a retrocessionaire or commit the reinsurer to any claim settlement with a retrocessionaire, without prior approval of the reinsurer. If prior approval is given, a report must be promptly forwarded to the reinsurer;
- F. Jointly employ an individual who is employed by the reinsurer unless such RM is under common control with the reinsurer subject to the [insert citation for Holding Company Act]; or
- G. Appoint a sub-RM.



**Section 9. Duties of Reinsurers Utilizing the Services of a Reinsurance Intermediary—Manager**

- A. A reinsurer shall not engage the services of any person, firm, association or corporation to act as a RM on its behalf unless the person is licensed as required by Section 3B of this Act.
- B. The reinsurer shall annually obtain a copy of statements of the financial condition of each RM which the reinsurer has engaged prepared by an independent certified accountant in a form acceptable to the commissioner.
- C. If a RM establishes loss reserves, the reinsurer shall annually obtain the opinion of an actuary attesting to the adequacy of loss reserves established for losses incurred and outstanding on business produced by the RM. This opinion shall be in addition to any other required loss reserve certification.
- D. Binding authority for all retrocessional contracts or participation in reinsurance syndicates shall rest with an officer of the reinsurer who shall not be affiliated with the RM.
- E. Within thirty (30) days of termination of a contract with a RM, the reinsurer shall provide written notification of termination to the commissioner.
- F. A reinsurer shall not appoint to its board of directors, any officer, director, employee, controlling shareholder or subproducer of its RM. This subsection shall not apply to relationships governed by the [insert citation to Holding Company Act] or, if applicable, [insert citation to state law equivalent to the Broker Controlled Insurer Act].

**Section 10. Examination Authority**

- A. A reinsurance intermediary shall be subject to examination by the commissioner. The commissioner shall have access to all books, bank accounts and records of the reinsurance intermediary in a form usable to the commissioner.
- B. A RM may be examined as if it were the reinsurer.

**Section 11. Compliance with Orders**

- A. A RB or RM shall comply with any order of a court of competent jurisdiction or a duly constituted arbitration panel requiring the production of non-privileged documents by the RB or RM, or the testimony of an employee or other individual otherwise under the control of the RB or RM with respect to any reinsurance transaction for which it acted as a RB or RM.
- B. Compliance shall be subject to the right of the RB or RM, and the parties to the reinsurance transaction, to object to the court or arbitration panel concerning the nature or scope of the documents or testimony or the time within which it must comply with the order. Failure to comply with the order shall be deemed to be a material non-compliance with this Act. However, in no event shall this section be construed to require more than one appearance by the same witness in a single action or arbitration.

## Section 12. Penalties and Liabilities

- A. If the commissioner determines that the reinsurance intermediary or any other person has not materially complied with this Act, or any regulation or order promulgated thereunder, after notice and opportunity to be heard, the commissioner may order:
- (1) For each separate violation, a penalty in an amount not exceeding \$5,000;
  - (2) Revocation or suspension of the reinsurance intermediary's license; and
  - (3) If it was found that because of such material non-compliance that the insurer or reinsurer has suffered any loss or damage, the commissioner may maintain a civil action brought by or on behalf of the reinsurer or insurer and its policyholders and creditors for recovery of compensatory damages for the benefit of the reinsurer or insurer and its policyholders and creditors or seek other appropriate relief.
- B. If an order of rehabilitation or liquidation of the insurer has been entered pursuant to [insert state's rehabilitation or liquidation statute], and the receiver appointed under that order determines that the reinsurance intermediary or any other person has not materially complied with this Act, or any regulation or order promulgated thereunder, and the insurer suffered any loss or damage therefrom, the receiver may maintain a civil action for recovery of damages or other appropriate sanctions for the benefit of the insurer.

**Drafting Note:** If state law does not otherwise provide, amend the bracketed citation in the preceding paragraph to include the rehabilitation or liquidation statute of any reciprocal state. This is intended to codify the standing of a receiver to maintain a civil action in a reciprocal state.

- C. Nothing contained in this section shall affect the right of the commissioner to impose any other penalties provided for in the insurance law.
- D. Nothing contained in this Act is intended to or shall in any manner limit or restrict the rights of policyholders, claimants, creditors or other third parties or confer any rights to such persons.

## Section 13. Reciprocity

- A. The insurance commissioner shall waive any requirements for a nonresident license applicant with a valid license from the applicant's home state, except the requirements imposed by Section 3 of this Act, if the applicant's home state awards nonresident licenses to residents of this state on the same basis.
- B. A nonresident reinsurance intermediary's satisfaction of any applicable home state continuing education requirements, if any, for licenses insurance producers or reinsurance intermediaries shall constitute satisfaction of this state's continuing education requirements if the nonresident producer's home state recognizes the satisfaction of its continuing education requirements imposed upon producers or reinsurance intermediaries from this state on the same basis.

**Drafting Note:** States are encouraged to eliminate any licensing and appointment retaliatory fees. In accordance with Public Law No. 106-102 (the "Gramm-Leach-Bliley Act"), states should not require nonresident fees that are so disparate from the resident fees that they impose a barrier to entry. Such fees would be prohibited under Public Law 106-102.

## **Section 14. Service of Process**

A reinsurance intermediary, by accepting licensure in this state, is deemed to have consented to the jurisdiction of the commissioner and of the courts of this state with respect to all activities conducted under the license, and to have designated the commissioner as its agent for service of process. Each licensed reinsurance intermediary shall furnish the commissioner with the name and address of a designated contact resident of this state to whom notices or orders of the commissioner or process affecting the reinsurance intermediary may be forwarded. The licensee shall promptly notify the commissioner in writing of every change in its designated contact for services of process, and such changes shall not become effective until acknowledged by the commissioner.

## **Section 15. Rules and Regulations**

The commissioner may adopt reasonable rules and regulations for the implementation and administration of the provisions of this Act.

**Drafting Note:** This section may be omitted if state's insurance law contains general rule-making provision.

## **Section 16. Effective Date**

This Act shall take effect on [insert date]. No insurer or reinsurer may continue to utilize the services of a reinsurance intermediary on and after [insert date] unless utilization is in compliance with this Act.

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### *Chronological Summary of Actions (all references are to the Proceedings of the NAIC)*

*1990 Proc. I 6, 30, 840, 844-850, 870-872 (adopted).*

*1990 Proc. II 7, 17-18, 748, 766, 770-775 (amended and reprinted).*

*1993 Proc. I 1128-1129, 1131, 1137-1138 (amended, reprinted and adopted by parent committee).*

*1993 Proc. 2<sup>nd</sup> Quarter 12, 102 (adopted by executive and plenary).*

*2001 Proc. 2<sup>nd</sup> Quarter 11, 14, 835, 943-944, 964-966 (amended).*

*2006 Proc. 2<sup>nd</sup> Quarter 40, 90 (amended).*

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## REINSURANCE INTERMEDIARY MODEL ACT

**These charts are intended to provide the readers with additional information to more easily access state statutes, regulations, bulletins or administrative rulings which are related to the NAIC model. Such guidance provides the reader with a starting point from which they may review how each state has addressed the model and the topic being covered. The NAIC Legal Division has reviewed each state's activity in this area and has made an interpretation of adoption or related state activity based on the definitions listed below. The NAIC's interpretation may or may not be shared by the individual states or by interested readers.**

**This state page does not constitute a formal legal opinion by the NAIC staff on the provisions of state law and should not be relied upon as such. Nor does this state page reflect a determination as to whether a state meets any applicable accreditation standards. Every effort has been made to provide correct and accurate summaries to assist the reader in targeting useful information. For further details, the laws cited should be consulted. The NAIC attempts to provide current information; however, due to the timing of our publication production, the information provided may not reflect the most up to date status. Therefore, readers should consult state law for additional adoptions and subsequent bill status.**

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**REINSURANCE INTERMEDIARY MODEL ACT**

**KEY:**

**MODEL ADOPTION:** States that have citations identified in this column adopted the most recent version of the NAIC model in a **substantially similar manner**. This requires states to adopt the model in its entirety but does allow for variations in style and format. States that have adopted portions of the current NAIC model will be included in this column with an explanatory note.

**RELATED STATE ACTIVITY:** States that have citations identified in this column have **not** adopted the most recent version of the NAIC model in a substantially similar manner. Examples of Related State Activity include but are not limited to: An older version of the NAIC model, legislation or regulation derived from other sources such as Bulletins and Administrative Rulings.

**NO CURRENT ACTIVITY:** No state activity on the topic as of the date of the most recent update. This includes states that have repealed legislation as well as states that have never adopted legislation.

<b>NAIC MEMBER</b>	<b>MODEL ADOPTION</b>	<b>RELATED STATE ACTIVITY</b>
Alabama	ALA. CODE §§ 27-5A-1 to 27-5A-13 (1993).	ALA. ADMIN. CODE r. 107 (1994).
Alaska	ALASKA STAT. §§ 21.27.670 to 21.27.770 (1992/2004) (portions of model).	ALASKA ADMIN. CODE tit. 3, § 23.140 (2009).
American Samoa	NO CURRENT ACTIVITY	
Arizona	ARIZ. REV. STAT. ANN. §§ 20-486 to 20-486.11 (1991/1993).	
Arkansas	ARK. CODE ANN. §§ 23-62-401 to 23-62-413 (1993/1995).	
California	CAL. INS. CODE §§ 1781.1 to 1781.13 (1992/2004).	
Colorado	COLO. REV. STAT. §§ 10-2-901 to 10-2-912 (1992/2009).	3 COLO. CODE REG. § 1-2-6 (1994/2003).
Connecticut	CONN. GEN. STAT. §§ 38a-760 to 38a-760I (1993/2012).	
Delaware	DEL. CODE ANN. § 1601 to 1613 (1991).	
District of Columbia	D.C. CODE §§ 31-1801 to 31-1810 (1993/2003).	

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<b>NAIC MEMBER</b>	<b>MODEL ADOPTION</b>	<b>RELATED STATE ACTIVITY</b>
Florida	FLA. STAT. § 626.7492 (1992/1995).	
Georgia	GA. CODE ANN. §§ 33-49-1 to 33-49-11 (1991).	
Guam	NO CURRENT ACTIVITY	
Hawaii	HAW. REV. STAT. §§ 431:9B-101 to 431:9B-111 (1992/2006).	HAW. CODE R. §§ 16-171-314 (2005/2012).
Idaho	IDAHO CODE ANN. §§ 41-5101 to 41-5111 (1992/1993).	BULLETIN 92-4 (1992).
Illinois	215 ILL. COMP. STAT. 100/1 to 100/60 (1991/2003).	
Indiana	IND. CODE §§ 27-6-9-1 to 27-6-9-26 (1991).	760 IND. ADMIN. CODE 1-51-1 to 1-51-7 (1993/2013).
Iowa	IOWA CODE §§ 521C.1 to 521C.12 (1991/1994).	
Kansas	KAN. STAT. ANN. §§ 40-4501 to 40-4513 (1992/2005).	
Kentucky	KY. REV. STAT. ANN. §§ 304.9-700 to 304.9-759 (1992).	
Louisiana	LA. REV. STAT. ANN. §§ 22:2210.21 to 22:2210.31 (1992).	
Maine	ME. REV. STAT. ANN. tit. 24-A, §§ 741 to 754 (1993).	
Maryland	MD. CODE REGS. 8-501 to 8-520 (1993/1997).	
Massachusetts	MASS. GEN. LAWS ch. 175, §§ 177M to 177W (1993).	
Michigan	MICH. COMP. LAWS §§ 500.1151 to 500.1171 (1994).	
Minnesota	MINN. STAT. §§ 60A.70 to 60A.756 (1991/1998).	



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<b>NAIC MEMBER</b>	<b>MODEL ADOPTION</b>	<b>RELATED STATE ACTIVITY</b>
Mississippi	MISS. CODE ANN. §§ 83-19-201 to 83-19-221 (1992).	
Missouri	MO. REV. STAT. §§ 375.1110 to 375.1140 (1991).	MO. CODE REGS. ANN. tit. 20, § 700-7.100 (1992/2003).
Montana	MONT. CODE ANN. §§ 33-2-1701 to 33-2-1709 (1993).	
Nebraska	NEB. REV. STAT. §§ 44-5601 to 44-5613 (1993/2002).	
Nevada		NEV. REV. STAT. §§ 681A.260 to 681A.580 (1995/2003); NEV. ADMIN. CODE §§ 681A.050 to 681A.110 (1996).
New Hampshire	N.H. REV. STAT. ANN. §§ 402-F:1 to 402-F:11 (1992/1997).	
New Jersey	N.J. REV. STAT. §§ 17:22E-1 to 17:22E-21 (1993).	N.J. ADMIN. CODE §§ 11:17-7.1 to 11:17-7.7 (1993/2003).
New Mexico	N.M. STAT. ANN. §§ 59A-12D-1 to 59A-12D-12 (1993/1999).	
New York		N.Y. INS. LAW §§ 2101 to 2138 (1984/2013) (Reinsurance intermediary provisions in agents licensing law); N.Y. COMP. CODES R. & REGS. tit. 11, §§ 32.0 to 32.4 (Regulation 98) (1982).
North Carolina	N.C. GEN. STAT. §§ 58-9-2 to 58-9-26 (1993/2001).	BULLETIN 94-B-3 (1994).
North Dakota	N.D. CENT. CODE §§ 26.1-31.1-01 to 26.1-31.1-12 (1991/1993).	
Northern Marianas	NO CURRENT ACTIVITY	
Ohio	OHIO ADMIN. CODE § 3901-1-09 (1993).	

**REINSURANCE INTERMEDIARY MODEL ACT**

<b>NAIC MEMBER</b>	<b>MODEL ADOPTION</b>	<b>RELATED STATE ACTIVITY</b>
Oklahoma	OKLA. STAT. tit. 36, §§ 5101 to 5113 (1992).	
Oregon	OR. REV. STAT. §§ 744.800 to 744.820 (1993/2003).	
Pennsylvania	40 PA. CONS. STAT. §§ 25-701 to 25-710 (1993).	
Puerto Rico	P.R. RULE XCVIII (2012).	
Rhode Island	R.I. GEN. LAWS §§ 27-52-1 to 27-52-13 (1992/1999).	
South Carolina	S.C. CODE ANN. §§ 38-46-10 to 38-46-120 (1992).	
South Dakota	S.D. CODIFIED LAWS §§ 58-14-24 to 58-14-42 (1993/1994).	
Tennessee	TENN. CODE ANN. §§ 56-6-801 to 56-6-812 (1993).	
Texas	TEX. INS. CODE ANN. §§ 4152.001 to 4152.302 (2005).	
Utah	UTAH CODE ANN. §§ 31A-23a-801 to 31A-23a-809 (1992/2003).	
Vermont	VT. STAT. ANN. tit. 8, §§ 4815 to 4824 (1992).	VT. STAT. ANN. tit. 8, §§ 6070 to 6075 (1994) (Reinsurance intermediaries for risk retention groups); 94 VT. CODE R. § 2 (1994).
Virgin Islands	NO CURRENT ACTIVITY	
Virginia	VA. CODE ANN. §§ 38.2-1347 to 38.2-1357 (1992/2001).	Admin. Letter 2002-10 (2002).
Washington	WASH. REV. CODE ANN. §§ 48.94.005 to 48.94.901 (1993/2005).	WASH. ADMIN. CODE 284-13-700 to 284-13-740 (1993/2010).
West Virginia	W. VA. CODE §§ 33-38-1 to 33-38-14 (1994/2005).	

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<b>NAIC MEMBER</b>	<b>MODEL ADOPTION</b>	<b>RELATED STATE ACTIVITY</b>
Wisconsin	WIS. ADMIN. CODE INS. §§ 47.01 to 47.10 (1993/2006).	WIS. ADMIN. CODE INS. §§ 6.58 to 6.61 (1977/1996).
Wyoming	WYO. STAT. ANN. §§ 26-47-101 to 26-47-113 (1992).	

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When drafters were preparing the Managing General Agents Model Act, they decided to exempt reinsurance managers from the provisions of that model. The NAIC, at the same time, assigned a group to begin drafting a model act relating to reinsurance intermediaries. It was the consensus of the committee that the same regulatory standards present in the MGA Act should be included in the Reinsurance Intermediary Model Act. **1990 Proc. IB 851.**

*[Because many provisions are similar to those of the Managing General Agents Model Act, the legislative history beginning at 225-11 may be helpful.]*

Before adoption of a model, the NAIC had discussed the subject for ten years. The working group was appointed two years before the adoption of a model. **1990 Proc. IB 870.**

#### Section 1. Short Title

#### Section 2. Definitions

D. A regulator opined that the definition of producer was not well established in 1993 when the Act was created. Since that time, the definition had become very precise so the old definition should be deleted or revised. The task force chose a definition that matched the one in the Producer Licensing Model Act. **2001 Proc. 1<sup>st</sup> Quarter 878.**

When the draft was reviewed before adoption, interested parties suggested adding “or reinsurance” to the end of the definition to account for the fact that some states separately license reinsurance intermediaries, the task force discussed the different ways some states handle this and decided not to make a further change to the definition. **2001 Proc. 2<sup>nd</sup> Quarter 948-949.**

F. The original draft referred only to reinsurance brokers, but a licensing act for reinsurance managers was also needed. Because the drafters felt it would be too confusing to have separate models covering these two intermediaries, the two were combined into one model. Industry suggested inclusion of a five percent de minimus threshold, which the working group unanimously agreed was not warranted. **1990 Proc. IB 871.**

The subsection was amended in 2001 when changes were adopted in response to the Gramm-Leach-Bliley Act. **2001 Proc. 2<sup>nd</sup> Quarter 964.**

G. A member of the NAIC staff was asked to compare the model as it existed before and after the amendments adopted in September 1993. The chart produced pointed out that the revised version exempted from the definition underwriting managers managing all *or part* of the reinsurance operations, under common control with the reinsurers, and not compensated based on volume of premiums written. **1993 Proc. 3<sup>rd</sup> Quarter 90.**

When amendments were being developed in 2001, one proposal for Paragraph (4) was to add wording to distinguish the group, pool or association from its members in regard to examination by the insurance commissioner. **2001 Proc. 1<sup>st</sup> Quarter 862.**

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#### Section 2G (cont.)

Additional changes were made to Subsection G before adoption of the revised model. **2001 Proc. 2<sup>nd</sup> Quarter 964.**

#### Section 3. Licensure

When the working group was considering amendments to the model, an industry letter urged them to consider changing this section to provide for one state licensing for reinsurance brokers with a registration provision. This had been included in an early draft of the model. The current model could require many brokers to be licensed in several different states. **1990 Proc. II 769.**

A regulator proposed adding “or reinsurance intermediary” in Subsections A through C each time a licensed producer was indicated. An interested party opined that nothing in the model requires a separate intermediary license and that the original intent was that a person with one of the three licenses mentioned could act as a reinsurance intermediary. The regulator responded that many states interpret Subsection D(1) to mean that a separate application process is established. The interested party agreed that the model was ambiguous in parts as it attempted to follow the Managing General Agents Act. **2001 Proc. 2<sup>nd</sup> Quarter 949.**

D. Early proposals included a non-resident licensing paragraph in both Sections 3A and 3B. Before finalizing the model, the task force decided to consolidate the non-resident provisions in Section 3D(2). **2001 Proc. 2<sup>nd</sup> Quarter 949.**

The drafting note following Paragraph (2) was also added with the amendments. **2001 Proc. 2<sup>nd</sup> Quarter 966.**

F. A regulator suggested moving the attorney exemption to Section 2G in order to specify what activities would not make one a reinsurance intermediary-manager. An interested party noted that the original exclusion was placed in Section 3 so that it would apply to both reinsurance intermediary-managers and reinsurance intermediary-brokers. The chair suggested leaving the exclusion in Section 3. **2001 Proc. 1<sup>st</sup> Quarter 862.**

#### Section 4. Required Contract Provisions—Reinsurance Intermediary—Brokers

#### Section 5. Books and Records - Reinsurance Intermediary—Brokers

#### Section 6. Duties of Insurers Utilizing the Services of a Reinsurance Intermediary—Broker

#### Section 7. Required Contract Provisions—Reinsurance Intermediary—Managers

A. A technical amendment adopted in June 1990 added the word “immediately” to the second sentence for clarification. **1990 Proc. II 773.**

N. The first phrase was added when technical amendments were made in June 1990. **1990 Proc. II 774.**

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#### Section 8. Prohibited Acts

A. The original version adopted in 1989 provided that an RM should not “bind” retrocessions. The technical amendments adopted in 1990 included changing the first word to “cede.” **1990 Proc. II 774.**

F. A technical changes adopted to this subsection was the addition of the last phrase referring to reinsurers subject to the Holding Company Act. **1990 Proc. II 775.**

#### Section 9. Duties of Reinsurers Utilizing the Services of a Reinsurance Intermediary— Manager

#### Section 10. Examination Authority

#### Section 11. Penalties and Liabilities

In June 1992 a proposal was presented by the MGA and Reinsurance Intermediary Working Group to amend Section 11. **1992 Proc. IIB 895-896.**

The NAIC proposed these amendments to provide consistency with the penalty provisions in the revised Business Transacted with Producer Controlled Property/Casualty Insurer Act. **1993 Proc. IB 1133.**

A. It was suggested to the drafters that the Act applies to intermediaries who represent the interests of insurers as well as those who represent the interests of reinsurers. The term “or reinsurer” was inserted after every reference to “insurer” in Paragraph (3). **1993 Proc. IB 1132.**

The subsection replaced by the 1992 amendments (finally adopted in September 1993) contained a list of three penalties the commissioner “shall” impose, making it a cumbersome all or nothing enforcement provision. The revised subsection provided the commissioner “may order” one or more of the specified penalties. **1993 Proc. IB 1132.**

In a summary of the differences between the old model and the revised version adopted in September 1993, it was pointed out that the old penalty provision allowed penalties to be imposed for *violations* of the Act, while the revised version allowed penalties because a person “had not *materially complied*” with the Act. **1993 Proc. 3rd Quarter 90.**

Comments received from a trade association included a suggestion that the penalty for each violation of the Act should be an amount *not exceeding* \$5,000 rather than a standard amount of \$5,000. The working group members agreed that they had intended to use the “not exceeding” language. **1993 Proc. IB 1130, 1133.**

A trade association suggested that there was a potential for multi-state enforcement. A \$5,000 penalty could be assessed in each state because the commissioner could impose penalties on a reinsurance intermediary which damaged any licensed insurer. The working group decided not to make a change, because it would limit the regulatory powers of insurance commissioners. **1993 Proc. IB 1131.**

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#### Section 11A (cont.)

One regulator suggested that the language of Paragraph (3) be changed so the commissioner could “institute or participate in” a civil action rather than “maintain” a civil action. Although working group members recognized that the proposed language would result in more flexibility for commissioners, they determined that the inconsistency with the Producer Controlled Insurer Act would be undesirable. **1993 Proc. IB 1131.**

Upon the suggestion of one of the working group members, the words “and its policyholders and creditors” were added following the word “insurers” in two places in Paragraph (3). Working group members agreed the change was beneficial and appropriate. **1993 Proc. IB 1131.**

In summarizing the differences between the newly revised model and the pre-1993 version, it was pointed out that the old Act provided for authority for the commissioner to order the reinsurance intermediary to pay restitution to an insurer, reinsurer, rehabilitator or liquidator for net losses incurred due to a violation of the Act. Under the revised version, if material noncompliance caused loss or damage to the insurer or reinsurer, the commissioner could maintain a civil action on behalf of the insurer or reinsurer and its policyholders and creditors to recover compensatory damages, or to seek other appropriate relief. **1993 Proc. 3rd Quarter 90.**

B. In the original draft of amendments, the model spoke of what the receiver “believed.” Comments received by the working group included a suggestion to change that to “determine” which would be more appropriate in light of the formal determination that must be made after notice and a hearing. **1993 Proc. IB 1133.**

A regulator suggested adding wording about proceedings in reciprocal states to the subsection. Following discussion the working group determined that the issue of a receiver’s potential standing to maintain a civil suit in a reciprocal state was better addressed in a drafting note because some states’ liquidation statutes may already provide for such standing. **1993 Proc. IB 1131.**

The old model contained a specific provision for judicial review of the commissioner’s order, while the 1993 version allowed the rehabilitator or liquidator to maintain a civil action for recovery of damages or appropriate sanctions for the benefit of the insurer against any person whose noncompliance with the Act caused loss or damage to the insurer. A drafting note was included concerning codification of the standing of the receiver to maintain a civil action in a reciprocal state. **1993 Proc. 3rd Quarter 90.**

#### Section 12. Reciprocity

This section was added as part of the 2001 amendments developed as a response to the Gramm-Leach-Bliley Act. **2001 Proc. 2nd Quarter 966.**

#### Section 13. Service of Process

This section was added in 2001. Just prior to adoption the task force decided to include a suggestion from an interested party to refer to a designated contact resident. **2001 Proc. 2nd Quarter 951, 966.**



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**Section 14. Rules and Regulations**

**Section 15. Effective Date**

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**Chronological Summary of Actions**

*December 1989: Model adopted.*

*June 1990: Technical amendments adopted.*

*September 1993: Revised penalties section of model and changed definition.*

*October 2001: Revised in response to the Gramm-Leach-Bliley Act to address reciprocity issues.*

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